IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1454 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BADI ABDUL GAJI AHMADBHAI

Versus

MAMADBHAI GAJIBHAI

Appearance:

1. Civil Revision Application No. 1454 of 2001

MR SURESH M SHAH for Petitioner No. 1

MR DAGLI FOR M/S THAKKAR ASSOC. for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 17/04/2002

ORAL JUDGEMENT

Rule. Mr. Dagli, learned advocate waives service of Rule on behalf of the respondent. Rule is fixed forthwith. Heard Mr. Shah, learned advocate for the petitioner-defendant and Mr. Dagli, learned advocate for the respondent- original plaintiff-decree holder. During the hearing, I was taken through the order passed by the learned trial Judge dated 29th November, 2001 below Application Exs. 34 and 35 filed by the petitioner

before the learned trial Judge under Order 21 Rule 97 and Rule 101 and under Section 151 of the CPC in a Civil Execution No. 41/99. Ex. 35 is filed by the petitioner objector praying for stay of the execution of the decree. As found from the order passed below Exs. 34 and 35, the learned Judge has passed the order, which I reproduce hereunder :-

> "The order passed below Ex. 1 on 15.9.2001 must be implemented first and thereafter this application shall be considered."

Mr. Shah, learned advocate for the petitioner has while arguing the matter has vehemently urged that the learned trial Judge was not right while keeping the applications pending by directing the Executing Court to proceed with the Darkhast Application. The affidavit -in-reply is filed by opponent no. 1 Mamadbhai Gajibhai by annexing certain documents and the order passed in a proceedings filed before this Court by Shri Hasanbhai against respondent- original plaintiff and the order passed dated 28th November, 2001, wherein, the Hon'ble High Court has directed to proceed with the Darkhast by appointing the Court Commissioner to remove the obstruction. It is the submission of Mr. Dagli that the application is filed by other persons, who have no interest and to protect the execution proceedings by raising objection in a case, where the decree was passed against the original defendant in respect of the suit property as back as in the year 1991. He accordingly, submitted that this court is not required to entertain such order while exercising my revisional powers under Section 115 of the CPC.

3. Considering the submissions made before me and on examining the order under challenge, prima-facie this court is of the view that the learned trial Judge was not right in proceeding with the execution application and keeping the applications Exs. 34 and 35 pending for hearing. This Court is of the view that the learned trial Judge was not right while keeping such applications pending and the learned Judge was required to decide the applications on merits. Even this Court is of the view that if the order passed by the learned trial Judge is not entertained by this court, it will amounts to injustice to a party. It will be open for the Court while considering the application on merits to reject the same by giving reasons. By keeping the applications pending and the execution proceeding is permitted to proceed further, it will be futile exercise to examine the application when the Executing Court is permitted to

execute the decree. Accordingly, without expressing on the contentions raised before me and without going into the merits, it will be in the fitness of thing to quash and set aside the order passed by learned trial Judge below Application Ex. 34 and it is directed that the learned trial Judge shall decide the application Ex.34 afresh as expeditiously as possible in accordance with law on or before 30th June, 2002. Parties are directed to cooperate to the learned trial Judge. This Civil Revision Application is accordingly disposed of with no order as to costs. Rule is made absolute in above terms. The stay of execution of Darkhast is accordingly confirmed till the disposal of the application Ex.34.

(D.K.Trivedi,J.)

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